

IFW 05-18-04 Af/3677 \$

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.
2858

In Re Application Of: **CATHLEEN WOODALL; JASON S. LANGSTON; and PAUL M. YATES**

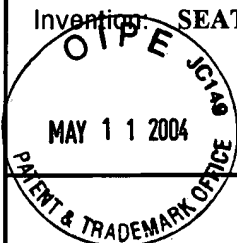
Serial No.
10/073,370

Filing Date
02/05/2002

Examiner
HO, THOMAS Y.

Group Art Unit
3677

Invention: **SEAT CUSHION WITH INTEGRATED HANDLE**



TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
MARCH 9, 2004

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

- ☐ is enclosed.
- ☒ has already been filed in this application.

The fee for filing this Appeal Brief is: **\$165.00**

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **08-0114**


Signature

Dated: **MAY 11, 2004**

**WALTER A. HACKLER, Ph.D.
PATENT LAW OFFICE
2372 S.E. BRISTOL STREET, SUITE B
NEWPORT BEACH, CALIFORNIA 92660-0755**

**TEL: (949) 851-5010
FAX: (949) 752-1925**

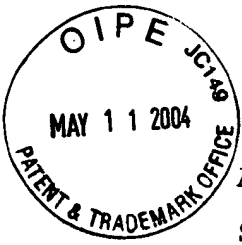
I certify that this document and fee is being deposited on
MAY 11, 2004 with the U.S. Postal Service as first
class mail under 37 C.F.R. 1.8 and is addressed to the
Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450.


Signature of Person Mailing Correspondence

WALTER A. HACKLER

Typed or Printed Name of Person Mailing Correspondence

CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: Cathleen Woodall, et al.) Examiner
 Serial No.: 10/073,370) Ho, Thomas Y.
 Filed: 02/05/2002) Group Art
 For: SEAT CUSHION WITH) 3677
 INTEGRATED HANDLE)

May 2004

BRIEF ON APPEAL

Mail Stop Appeal Brief Patents
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450

Dear Sir:

This appeal is taken from a rejection of the claims of the hereinabove referenced Patent Application in a final Office Action mailed December 11, 2003; oral hearing is waived.

REAL PARTY OF INTEREST

The present application is presently assigned to Gelco Products LLC as evidenced by an assignment recorded on February 5, 2002 on reel 012591 on frame 0458.

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences on applications related to the present application.

STATUS OF CLAIMS

<u>Claims</u> (See Appendix A)	<u>Status</u>
1-2, 5-6, 8-10 and 13-14	Rejected under 35 USC 103(a) on the basis of U.S. 2,156,629 to Hutchison in view of U.S. 5,297,848 to Grinnell.
3 and 11	Rejected under 35 USC 103(a) on the basis of U.S. 2,156,629 to Hutchison in view of 5,297,848 to Grinnell and further in view of U.S. 4,031,578 to Sweeney.
7	Rejected under 35 USC 103(a) on the basis of U.S. 2,156,629 to Hutchison in view of U.S. 5,297,848 to Grinnell and further in view of U.S. 5,611,098 to Skibik.

STATUS OF POST FINAL AMENDMENT

None

CONCISE SUMMARY OF THE INVENTION

The present invention provides for a seat cushion, which includes a pair of generally flat patch for supporting the users buttocks. Transportability of the seat cushion is provided by a hinged handle and spaced apart arms, which are attached to and extend from the pads and the hinged handle. These spaced apart arms hold the pads and handle in a spaced apart relationship and further enable grasping of the hinged handle by the user. The arms are flexible for enabling the pads to be oriented in both a planar relationship for supporting the users buttocks and a folded parallel relationship for enabling transport of the seat cushion by the handle. This unique arrangement provides for providing a convenient transport. In addition, the handle on the arms are recessed from the top of the pads which enables a users coccyx to depend between the pads in order to prevent pressure and accordingly provide a long term comfortable seating for the user.

ISSUES PRESENTED FOR REVIEWOBVIOUSNESS

The Examiner has rejected claims 1-2, 5-6, 8-10 and 13-14 under 35 USC 103(a) on the basis of U.S. 2,156,629 to Hutchison in view of U.S. 5,297,848 to Grinnell.

The Examiner has further rejected claims 3 and 11 under 35 USC 103(a) on the basis of U.S. 2,256,629 to Hutchison in view of U.S. 5,297,848 to Grinnell and further in view of U.S. 4,031,578 to Sweeney.

In addition, claim 7 has been rejected by the Examiner under 35 USC 103(a) on the basis of U.S. 2,156,629 to Hutchison in view of U.S. 5,297,848 to Grinnell and further in view of U.S. 6,011,098 to Skibik.

GROUPING OF CONTESTED CLAIMS

A request for separate review by the Board with respect to Patentability under the obviousness rejections is made for the following groups.

Group 1, claims 1-2, 5-10 and 13-14; do not stand and fall with claims 3 and 11, the Appellants making this statement in compliance with 37 CFR 1.192(c)(5). Support for this statement is given hereafter.

Group 2, claims 3 and 11 do not stand and fall with claims 1-2, 5-10 and 13-14, the Appellants making this statement in compliance with 37 CFR 1.192(c)(5). Support for this statement is given hereafter.

ARGUMENT

Rejection of Group 1 claims under 35 USC 103(a).

The Examiner has rejected claims 1-2, 5-6, 8-10 and 13-14 under 35 USC 103(a) as being unpatentable over

Hutchison and Grinnell, claim 7 is also rejected by further reference to Skibik.

In this rejection, the Examiner states that with regard to claim 1, Hutchison discloses a seat cushion comprising a pair of generally flat pads 10, 11 for supporting a users buttocks; spaced apart arms 15', 16', attached to and extending from the pads for holding the pads in a spaced apart relationship with the arms being flexible for enabling the pads to be oriented in both a planar relationship for supporting the users buttocks and a folded parallel plane relationship.

The Examiner also alleges that the arms 15' and 16' include forearms 15' and aftarms 16'. The Examiner states that the difference between the claim and Hutchison is that the claim recites a hinged handle disposed between the pads for carrying a seat cushion with the pads and handle in a spaced apart relationship for enabling grasping of the hinged handle by the user and enabling transport of the seat cushion by the handle forearms and aftarms.

It is clear that while not admitted by the Examiner, the Hutchison reference does not teach or suggest a handle.

Accordingly, the Examiner reaches to Grinnell for disclosing a hinged handle 80 disposed between the pads 10, 40 for carrying the seat cushion with the pads and handle held in a spaced apart relationship and enabling grasping of the hinged handle by the user for enabling transport of the seat cushion by the handle forearms and aftarms, each joined in the opposite sides of the hinged handle for

holding the handle in a spaced apart relationship with the folded pads.

The Examiner concludes it would have been obvious to one of ordinary skill in the art having to disclosures of Hutchison and Grinnell beforehand at the time the invention was made to modify the pads and connecting arms of Hutchison to have a handle as in Grinnell to obtain a handle for a seat cushion.

The Appellants respectfully submit that the structure of either Hutchison or Grinnell does not teach or suggest arms, including forearms and aftarms which are joined to opposite ends of the Hinged handle for holding the hinged handle in a spaced apart relationship with the folded pads.

This is important in maintaining orientation of the seat cushion in accordance with the present invention for proper and comfortable engagement with the user, thus enabling the users coccyx to depend between the pads in order to prevent pressure on the coccyx, see claim 2.

In one embodiment, of Hutchison shown in Figure 1, the straps 15 and 16 are made of material, such as a heavy compounded rubber, which is rigid in order to fixedly hold the seat members in a spaced apart relationship, see column 3, lines 32-29. Accordingly, these rigid straps do not function in a manner enabling folding of the pads.

In the embodiment of Hutchison shown in Figure 2, there is shown seat members 10 and 11 held together by flexible straps 15' and 16', which permit the user to

adjust the distance at the rear of the seat to fit the individual requirements. See column 3, lines 39-49. These straps 15' and 16' are not constructed in a manner for enabling the pads to be held apart from one another and since there is no handle taught in Hutchison, there can be no structure which provides for forearms joined to opposite ends of the hinged handle for holding the hinged handle in a spaced apart relationship with the folded pads.

The Examiner states that Grinnell teaches a handle and it could be attached between the two straps of Hutchison.

With consideration of the rigid straps 15 and 16 there would be no motivation to attach them to a handle since these ridged straps are not foldable for enabling the pads to be disposed in a parallel relationship with one another.

With regard to the straps 15' and 16', there is no suggestion or teaching of arms which hold the hinged handle in a spaced apart relationship with the folded pads, as shown in Figure 2 of the present application.

In addition, as earlier argued, the Appellants submit that there is no motivation for the combination of Hutchison and Grinnell due to the fact that the Hutchison seat is not meant to be easily portable in view of the fact that the straps 17, 18, 19 and rings 20 are provided to secure the seat member to a supporting surface, see column 2, lines 41-49, thus the Appellants submit there is no motivation to provide a handle for the Hutchison seat.

The Appellants again further submit that the mere fact that a teaching is found in the prior art could combine as proposed by the Examiner does not make the combination obvious, absence of teaching, suggestion, or incentive supporting the proposed combination. Accordingly, the Appellants submit that the straps utilized by Hutchison to secure the seat to a supporting surface is evidence supporting the conclusion that the Hutchison seat was not meant to be portable and accordingly there would be no motivation to provide a handle thereto.

Turning to the Grinnell reference, it is clear that the carrying handle 90 is attached to the strip 70 for carrying the apparatus as shown in Figure 5 and described in column 4, lines 53-55. However, there is no teaching or suggestion of spaced apart arms extending from the pads and the hinged handles for holding the pads and the handle in a spaced apart relationship, particularly when the pads are folded.

The strip 70 of Grinnell clearly extends between the pads, however, does not include a forearm and an aftarm for supporting the opposite ends of the handle. Even if portions of the strip 70 were considered independently to be the equivalent of a forearm and an aftarm, there is no support of the handle in a spaced apart relationship either when the pads are in a planar relationship or in folded relationship.

The handle 90 itself includes opposite ends attached to the strip 70. However, these opposite ends cannot be construed as fore and aftarms since they do not extend

between the pads, but rather are fixed to the strip 70. In addition, the ends of the handle 70 do not hold the handle in a spaced apart relationship with the folded pads.

If the ends are considered to be holding the handle 90 in a spaced apart relationship, that relationship would be with the strip 70. That is, the ends of the handle 70 cannot be considered spaced apart arms extending from the pads and attached thereto for holding the pads and the handle in a spaced apart relationship.

Accordingly, the Appellants respectfully submit that the Examiner has not made a prima facie case of obviousness under 35 USC 103(a) and respectfully request the Board to revise the rejection of claims 1-2 and 5-10 on the basis of the Hutchinson and Grinnell references.

ARGUMENT

Rejection of claims 3 and 11 under 35 USC 103(a) are Group 2 claims.

The Examiner has rejected claims 3 and 11 under 35 USC 103(a) as being unpatentable over Hutchison in view of Grinnell and further in view of Sweeney.

In this rejection, the Examiner states that with regard to claim 3 Hutchison discloses the seat cushion according to claim 2 with the difference between the claim and Hutchison being that the claim recites that the pads arms and hinged handle are integrally molded.

It is apparent that no such integral molding is shown in the Hutchison reference and accordingly the Examiner reaches to Sweeney for disclosing a pad that is similar to Hutchison. Clearly, this opinion of the Examiner must be closely scrutinize since a side by side comparison of the Sweeney, et al. reference and the Hutchison reference does not show any similarity whatsoever.

The Examiner further states that Sweeney teaches that it could be desirable to integrally mold the device and concludes it would have been obvious to one of ordinary skill in the art having the disclosures of Hutchison and Sweeney beforehand at the time the invention was made to integrally mold the elements of Hutchison as taught by Sweeney to achieve an integrally molded pad.

The Examiner asserts that one would have been motivated to make such a combination because the ability for the pad to be of unitary construction would have been achieved is taught by Sweeney and further the term "integral" does not require a unitary one-piece structure. The Examiner relies on In re Kohno, 175 USPQ 275 (CCPA 1968) and In re Larson, 144 USPQ 347 (CCPA 1965) for concluding that the term "integral" is not necessarily restricted to a one piece article.

In the case at hand, the Appellants submit that the claims are to be interpreted by the specification, which include the drawings and the drawings that show the pads, arms and hinged handle to be a one piece integrally molded unit.

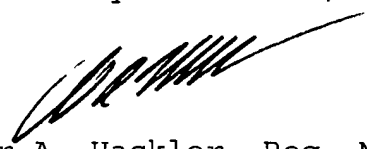
A term's ordinary meaning must be considered in the context of all intrinsic evidence, namely the claims, the specifications and the prosecution history Grant v. Logitech, Inc., 59 USPQ 1290 (Fed. Cir. 2001). The definition of a claim term in the specification prevails over a term's ordinary dictionary meaning. Rexnord Corp. v. Laitram Corp., 60 USPQ 2d 1851 (Fed. Cir. 2001).

The Examiner is attempting to define the language of the claims in the abstract by reference to isolated references giving unique description and not utilizing the specification for interpreting the claims. The Appellants submit that the claims are to be read in the light of the disclosure of the specification on which they are based. In re Dean, 130 USPQ 107, 110 (CCPA 1961).

Accordingly, the Appellants submit that a prima facie case of obviousness for claims 3 and 11 has not been made under 35 USC 103(a).

In view of the hereinabove presented arguments, the Appellants respectfully request the Board to reverse the Examiner's rejection of claims 1-3, 5-11 and 13-14 under 35 USC 103(a).

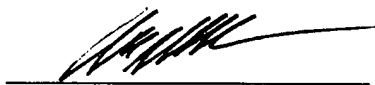
Respectfully submitted,



Walter A. Hackler, Reg. No. 27,792
Attorney of Record
2372 S.E. Bristol, Suite B
Newport Beach, California 92660
Tel: (949) 851-5010
Fax: (949) 752-1925

I hereby certify that this correspondence is being deposited on May 11, 2004 with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, Virginia 22313-1450.

May 11, 2004
(Date Signed)



Walter A. Hackler
Reg. No. 27,792

APPENDIX A
CLAIMS ON APPEAL
SERIAL NO. 10/073,370

1. (Previously Amended) A seat cushion comprising:
a pair of generally flat pads for supporting a user's buttocks;

a hinged handle disposed between the pads for carrying said seat cushion;

spaced apart arms, attached to and extending from the pads and said hinged handle, for holding the pads and handle in a spaced apart relationship and enabling grasping of said hinged handle by the user, said arms being flexible for enabling the pads to be oriented in both a planar relationship for supporting the user's buttocks and a folded parallel plane relationship for enabling transport of said seat cushion by the handle, the arms including forearms and aftarms each joined to opposite ends of said hinged handle for holding said hinged handle in a spaced apart relationship with the folded pads.

2. (Previously Amended) The seat cushion according to claim 1 wherein said hinged handle and said arms are recessed from a top of each of the pads for enabling the user's coccyx to depend between the pads in order to prevent pressure on the coccyx.

3. (Previously Amended) The seat cushion according to claim 2 wherein the pads, arms and hinged handle are integrally molded.

4. (Cancelled)

5. (Previously Amended) The seat cushion according to claim 1 wherein each of the pads include an arcuate forward perimeter, the forward perimeters being joined by the forearms.

6. (Original) The seat cushion according to claim 5, wherein each of the pads include an arcuate rearward perimeter, the rearward perimeter being joined by the aftarms.

7. (Previously Amended) The seat cushion according to claim 2 further comprising means for releasably holding the pads in the parallel planer relationship.

8. (Previously Amended) A seat cushion comprising:
a pair of generally flat pads for supporting a user's buttocks, the pads having mirror image perimeters;
a single hinged handle disposed between the pads for carrying said seat cushion;
spaced apart arms, attached to and extending from the pads and said hinged handle, for holding the pads and handle in a spaced apart relationship and enabling grasping of said hinged handle by the user, the arms being flexible for enabling the pads to be oriented in both a planar relationship for supporting the user's buttocks and a folded parallel plane relationship for enabling transport of said seat cushion by the hinged handle, the arms including forearms and aftarms each joined to opposite ends of said hinged handle for holding said hinged handle in a spaced apart relationship with the folded pads.

9. (Previously Amended) The seat cushion according to claim 8, wherein said hinged handle and arms have a thickness smaller than a thickness of the pads and are disposed between the pads for enabling the user's coccyx to depend between the pads in order to prevent pressure on the coccyx.

10. (Original) The seat cushion according to claim 9 wherein the handle arms and pads each have a bottom surface disposed in a single plane with the pads oriented for supporting the user's buttocks.

11. (Previously Amended) The seat cushion according to claim 10 wherein the pads, arms and hinged handle are integrally molded.

12. (Cancelled)

13. (Previously Amended) The seat cushion according to claim 8 wherein each of the pads include an arcuate forward perimeter, the forward perimeters being joined by the forearms.

14. (Original) The seat cushion according to claim 13 wherein each of the pads include an arcuate rearward perimeter, the rearward perimeter being joined by the aftarms.

Claims 15-23 cancelled.

HEREBY CERTIFY THAT THIS CORRESPONDENCE IS
BEING DEPOSITED WITH THE U.S. POSTAL SERVICE
AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED
TO: COMMISSIONER OF PATENTS, P.O. BOX 1450
ALEXANDRIA, VIRGINIA 22313-1450 ON

5/11/04
(DATE SIGNED)
WALTER A. HACKLER
REG. NO. 87, 702